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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

9 CITY OF SEATTLE, a municipality
10 located in King County, Washington,

11 Plaintiff,

12 v.

13 KIRO-TV, INC., a Delaware corporation
14 with its principal place of business in
Seattle, Washington,

15 Defendant.

No. 06-2-26197-6 SEA

ORDER ON CROSS-MOTIONS
FOR SUMMARY JUDGMENT

16 THIS MATTER, having come on regularly for hearing before the undersigned Judge upon
17 the parties' cross-motions for summary judgment, and the court being familiar with the files and
18 pleadings in this matter, and being fully advised in the premises, the court finds as follows:

19 Both the City of Seattle and KIRO-TV have filed cross-motions for summary judgment
20 asking this court to determine as a matter of law whether a city employee's date of birth is
21 susceptible to a public disclosure request under RCW 42.56, *et seq.*

22 It is undisputed that the legislature failed to include in its listed exemptions an employee's
23 date of birth under either RCW 42.56.230 or 42.56.250. Specifically, if a requested document falls

1 under the scope of the Public Records Act (RCW 42.56), a public agency must disclose the
2 requested document unless a specific exemption applies. The often cited Latin maxim that
3 construes statutes reads: That what is not included is excluded. (*Expressio unis est exclusion*
4 *alterius.*)

5 There is no Public Records Act exemption for the dates of birth of public employees. The
6 legislature however did exempt dates of birth for the dependents of public employees, but not for
7 the employee. See RCW 42.56.250(3).

8 * * * *

9 . . . (3) The residential addresses, residential telephone numbers, personal wireless
10 telephone numbers, personal electronic mail addresses, social security numbers, and
11 emergency contact information of employees or volunteers of a public agency, and
12 the names, **dates of birth**, residential addresses, residential telephone numbers,
13 personal wireless telephone numbers, personal electronic mail addresses, social
14 security numbers, and emergency contact information of **dependents of employees**
or volunteers of a public agency that are held by any public agency in personnel
records, public employment related records, or volunteer rosters, or are included in
any mailing list of employees or volunteers of any public agency. For purposes of this
subsection, "employees" includes independent provider home care workers as defined
in RCW 74.39A.240 . . . (emphasis added)

15 * * * *

16 During oral argument neither counsel ventured to answer whether this was a legislative
17 oversight or an intentional omission in dealing with the aftermath of *King County v. Sheehan*, 114
18 Wn.App 325 (2002).

19 To determine whether a public employee's date of birth is protected by an individual's
20 privacy right in relation to a public disclosure request, the Washington Supreme Court answered this
21 query in the negative in its recent holding in *Koenig v. City of Des Moines*, 158 Wn.2d 173, 142
22 P.3d 162 (2006). Simply stated, this court is prohibited from balancing an individual's right to
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1 privacy against a public disclosure request. Although common sense would yield a different
2 answer, this trial court, as any other, must follow the principle of *stare decisis* and reluctantly finds
3 that the dates of birth of public employees are not exempt from disclosure under the Public Records
4 Act.

5 It is not lost upon the court or any citizen that in this day of increasing numbers of identity
6 theft cases, the use of a date of birth coupled with other personal identifiers (*e.g.*, address, social
7 security number, etc.) leaves public employees in a more compromised position than private
8 employees. Moreover, this omission by the legislature (exempting dates of birth of public
9 employees) creates a vulnerable class of employees left susceptible to the motives of ill-intentioned
10 people with pecuniary interests as their goal under the guise of public disclosure.

11 This ruling shall be stayed for a period of 45 days from today's date. Costs in the matter
12 shall be imposed at a rate of \$5.00 each day since KIRO's request was made and the filing of the
13 City's lawsuit. The reason the court has imposed the minimum penalty for failure to provide the
14 requested document or information as envisioned by RCW 42.56 is due to the following:

- 15 1. The City did provide the birth year of the requested employee information; and
- 16 2. The City sought an expedited determination of this issue by filing the lawsuit and
17 filing its motion for summary judgment as soon as the rules permitted.

18 NOW THEREFORE, IT IS SO ORDERED.

19 DATED this 8th day of December, 2006.

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22 Judge Julie A. Spector
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